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9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 925-A

12 **WILLIAM CHUAN SHEN**
13 **5341 La Madera Avenue**
14 **El Monte, CA 91732**

A C C U S A T I O N

15 **Civil Engineer License No. C 27460**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity
21 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
22 Department of Consumer Affairs.

23 2. On or about November 10, 1976, the Board for Professional Engineers and Land
24 Surveyors issued Civil Engineer License Number C 27460 to William Chuan Shen (Respondent).
25 The Civil Engineer License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on June 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.

All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 8780 of the Code states, in pertinent part:

[T]he board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

....

(b) Any negligence or incompetence in his or her practice of land surveying.

....

(d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying.

....

(h) A violation in the course of the practice of land surveying of a rule or regulation of unprofessional conduct adopted by the board.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

6. California Government Code section 66434 states, in pertinent part:

The final map shall be prepared by or under the direction of a registered civil engineer or licensed land surveyor, shall be based upon a survey, and shall conform to all of the following provisions:

....

(c) All survey and mathematical information and data necessary to locate all monuments and to locate and retrace any and all interior and exterior boundary lines appearing on the map shall be shown, including bearings and distances of straight lines, and radii and arc length or chord bearings and length for all curves, and any information that may be necessary to determine the location of the centers of curves and ties to existing monuments used to establish the subdivision boundaries.

REGULATORY PROVISIONS

7. California Code of Regulations, title 16, (CCR) section 404.2 states, in pertinent part:

(a) The term "responsible charge" directly relates to the extent of control a licensed land surveyor or civil engineer legally authorized to practice land surveying (hereinafter referred to as "legally authorized civil engineer") is required to maintain while exercising independent control and direction of land surveying work or services and the land surveying decisions which can be made only by a licensed land surveyor or legally authorized civil engineer.

(1) Extent of Control. The extent of control necessary to be in responsible charge shall be such that the land surveyor or legally authorized civil engineer:

(A) Makes or review and approves the land surveying decisions defined and described in subdivision (a)(2) below.

(B) In making or reviewing and approving the land surveying decisions, determines the applicability of survey criteria and technical recommendations provided by others before incorporating such criteria or recommendations.

(2) Land Surveying Decisions. The term "responsible charge" relates to land surveying decisions within the purview of the Professional Land Surveyors' Act.

Land surveying decisions which must be made by and are the responsibility of the land surveyor or legally authorized civil engineer in responsible charge are those decisions concerning permanent or temporary work which could create a hazard to life, health, property, or public welfare, and may include, but are not limited to:

(A) Selecting the methods, procedures, and tolerances of field work.

(B) Determining calculation and adjustment methods.

(C) Determining and specifying the information to be shown on maps or documents furnished in connection with land surveying services, including the format of the information and the format of the maps or documents.

(D) The decisions related to the preparation of maps, plats, land surveying reports, descriptions, and other land surveying documents furnished in connection with the land surveying services.

(E) Reviewing the sufficiency and accuracy of the work product.

(3) Reviewing and Approving Land Surveying Decisions. In making or reviewing and approving land surveying decisions, the land surveyor or legally authorized civil engineer shall be physically present or shall review and approve through the use of communication devices the land surveying decisions prior to their implementation.

(b) Responsible Charge Criteria. In order to evaluate whether a person authorized to practice land surveying is in responsible charge, the following must be considered: The land surveyor or legally authorized civil engineer who signs surveying documents must be capable of answering questions asked by licensees of the Board who are fully competent and proficient by education and experience in the field or fields of professional land surveying relevant to the project. These questions would be relevant to the decisions made during the individual's participation in the project, and in sufficient detail to leave little question as to the land surveyor's or legally authorized civil engineer's technical knowledge of the work performed. It is not necessary to defend decisions as in an adversarial

1 situation, but only to demonstrate that the individual in responsible charge made,
2 or reviewed and approved, them and possessed sufficient knowledge of the project
to make, or review and approve, them.

3 Examples of questions to be answered by the land surveyor or legally
4 authorized civil engineer could relate to criteria for measurement, surveying
5 methods, analysis, and conclusions made including, but not limited to, the
6 retracement of government surveys, interpretation and construction of deed
7 descriptions, conflicts between construction drawings and actual conditions,
determination of the proper control datum and epoch, application of proportion
8 methods, and analysis of evidence related to written and unwritten property rights.
The individual shall be able to clearly express the extent of control and how it is
exercised and to demonstrate that the land surveyor or legally authorized civil
engineer is answerable within said extent of control.

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9 8. CCR, section 464 states, in pertinent part:

10 “. . . .

11 “(b) A corner record shall be filed for each public land survey corner which is found, reset,
12 or used as control in any survey by a land surveyor or a civil engineer. Exceptions to this rule are
13 identified in Section 8773.4 of the Code.

14 “(c) The corner record shall be filed within 90 days from the date a corner was found, set,
15 reset, or used as control in any survey. The provisions for extending the time limit shall be the
16 same as provided for a record of survey in Section 8762 of the Code.

17 “. . . .”

18 9. CCR, section 476 states, in pertinent part:

19 To protect and safeguard the health, safety, welfare, and property of the
20 public, every person who is licensed by the Board as a professional land surveyor
21 or professional civil engineer legally authorized to practice land surveying,
including licensees employed in any manner by a governmental entity or in private
22 practice, shall comply with this Code of Professional Conduct. A violation of this
Code of Professional Conduct in the practice of professional land surveying
23 constitutes unprofessional conduct and is grounds for disciplinary action pursuant
to Section 8780 of the Code. This Code of Professional Conduct shall be used for
24 the sole purpose of investigating complaints and making findings thereon under
Section 8780 of the Code.

25 (a) Compliance with Laws Applicable to a Project:

26 A licensee shall provide professional services for a project in a manner that
27 is consistent with the laws, codes, ordinances, rules, and regulations applicable to
that project. A licensee may obtain and rely upon the advice of other professionals
28 (e.g., architects, attorneys, professional engineers, professional land surveyors, and

1 other qualified persons) as to the intent and meaning of such laws, codes, and
2 regulations.

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(c) Representations:

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(11) A licensee shall not misrepresent data and/or its relative significance in
5 any professional land surveying report.

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(e) Document Submittal:

(1) A licensee shall not misrepresent the completeness of the professional
7 documents he or she submits to a governmental agency.

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9 **COST RECOVERY**

10 10. Section 125.3 of the Code provides, in pertinent part, that the board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 **CITY OF RIVERSIDE TRACT 34532**

15 11. In or about November of 2006, Respondent, a licensed civil engineer authorized to
16 practice land surveying under Business and Professions Code section 6731, submitted to the City
17 of Riverside, a final map for Tract 34532 (First Submittal). The First Submittal was deficient in
18 that Respondent misidentified every monument on the map. Many monuments no longer existed
19 at the time Respondent's survey occurred.

20 12. Respondent made additional errors in the First Submittal in that he showed property
21 boundary lines that vary from the record, he did not indicate descriptively or graphically why or
22 how these lines were established, and he placed two easements along the wrong boundary line.

23 13. Respondent's First Submittal lacked a basis of bearings and several record
24 dimensions. It also failed to adequately describe the methodology used to determine the
25 placement of various lines and points.

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1 **CITY OF RIVERSIDE TRACT 32606**

2 14. In or about January of 2006, Respondent submitted to the City of Riverside a final
3 map for Tract 32606. The map was rejected by the City of Riverside because it failed to meet
4 minimum standards in terms of required content and basic drafting.

5 15. The plan sheets for Tract 32606 went through eight reviews by the City of Riverside
6 before they were finally approved. Respondent failed to make the corrections requested by the
7 City on numerous occasions, or made corrections improperly, leading to further review and
8 additional correction requests.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Negligence in the Practice of Land Surveying)**

11 16. Respondent is subject to disciplinary action under Code section 8780 (b) in that he
12 was negligent in his practice of land surveying regarding City of Riverside Tracts 34532 and
13 32606, as set forth in paragraphs 11-15 above, which are incorporated by reference herein.

14 17. In particular, the maps prepared by Respondent did not meet the standard of care for a
15 licensed civil engineer authorized to practice land surveying in that they contained a number of
16 errors and deficiencies that required multiple changes to the plans. These errors and deficiencies
17 include but are not limited to the following:

- 18 a. Failed to properly identify and locate monuments in the plans.
19 b. Failed to properly perform the work in preparing the plans.
20 c. Failed to properly supervise the work of subordinates in preparing the plans.
21 d. Failed to properly process and respond to comments from the City of Riverside for
22 corrections to the plans.
23 e. Failed to properly follow published standards with respect to map preparation.
24 f. Used non-standard methods of re-establishing lines.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Failure to Provide Sufficient and Correct Information)**

27 18. Respondent is subject to disciplinary action under Code section 8780 (d) in
28 conjunction with California Government Code section 66434 (c) in that Respondent failed to

1 provide sufficient and correct information to allow another surveyor to retrace exterior and
2 interior boundary lines regarding City of Riverside Tracts 34532 and 32606, as set forth in
3 paragraphs 11-15 above, which are incorporated by reference herein.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Violations of the Code of Professional Conduct)**

6 19. Respondent is subject to disciplinary action under Code section 8780 (h) for
7 violations of the Code of Professional Conduct set forth in CCR, section 476, regarding the maps
8 Respondent prepared for City of Riverside Tracts 34532 and 32606, as set forth in paragraphs 11-
9 15 above, which are incorporated by reference herein.

10 20. Respondent acted unprofessionally in the preparation of the maps as follows:

11 a. Respondent failed to comply with the state and local laws applicable to his projects.
12 Several sets of review comments and special accommodations were required to bring the plans
13 into compliance, in violation of CCR 476 (a).

14 b. Respondent misrepresented data in his First Submittal on Tract 34532 with respect to
15 the existence and/or the nature of the monuments and with respect to representation of data, in
16 violation of CCR 476 (c)(11).

17 c. Respondent's submittals of final maps were repeatedly incomplete, in violation of
18 CCR 476 (e)(1).

19 **MASTERS CIRCLE PROPERTY**

20 21. In or about January of 2007, Respondent, conducted a survey and prepared a Corner
21 Record for lot 10 on Masters Circle in Tract 6508 in Orange County, California. However, the
22 Corner Record was not submitted to Orange County Surveyor's office until May of 2008, over 16
23 months later. The County determined that the Corner Record was incomplete and contained
24 errors, and requested Respondent re-submit the Corner Record. The second submission was also
25 incomplete and contained errors. The County then requested that Respondent submit a Record of
26 Survey for his work. The Record of Survey did not agree with the earlier filed Corner Records or
27 with the Tract Map.

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22. Respondent failed to exercise independent control and direction of the work performed on this project. He did not show initiative or independent judgment in the preparation and approval of the plans submitted. In particular, Respondent's continuing changes and corrections to the Corner Record and the Record of Survey indicate material differences between the data shown on the Tract Map and the field measurements.

FOURTH CAUSE FOR DISCIPLINE

(Negligence in the Practice of Land Surveying)

23. Respondent is subject to disciplinary action under Code section 8780 (b) in that Respondent was negligent and/or incompetent in his practice of land surveying regarding lot 10 on Masters Circle in Tract 6508 in Orange County, California, as set forth in paragraphs 21 and 22 above, which are incorporated by reference herein.

24. In particular, the plans prepared by Respondent did not meet the standard of care for a licensed civil engineer authorized to practice land surveying in that they contained a number of errors and deficiencies that required multiple changes to the plans. These errors and deficiencies include but are not limited to the following:

- a. An unacceptable proposed solution of resolving excess distance by increasing the right of way width.

b. The monuments described as being on the property line produced a northeasterly line, but were described as being to the north and west.

c. The second Corner Record identified a chiseled cross as a monument that was not indicated on the first Corner Record.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Responsible Charge)

25. Respondent is subject to disciplinary action under Code section 8780 (h) for violation of CCR, section 404.2 in that he failed to demonstrate responsible charge in his practice of land surveying regarding lot 10 on Masters Circle in Tract 6508 in Orange County, California, as set forth in paragraphs 21 and 22 above, which are incorporated by reference herein.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Failure to File a Timely Corner Record)**

3 26. Respondent is subject to disciplinary action under Code section 8780 (h) for violation
4 of CCR, section 464 (c) in that he failed to file the Corner Record within 90 days of his survey of
5 lot 10 on Masters Circle in Tract 6508 in Orange County, California, as set forth in paragraphs 21
6 and 22 above, which are incorporated by reference herein.

7 **DISCIPLINARY CONSIDERATIONS**

8 27. To determine the degree of discipline, if any, to be imposed on Respondent,
9 Complainant alleges that on or about January 12, 2001, in a prior disciplinary action entitled "In
10 the Matter of the Accusation Against William Chuan Shen" before the Board for Professional
11 Engineers and Land Surveyors, in Case Number 677-A, Respondent's license was suspended for
12 two years with the suspension stayed and Respondent was placed on probation for three years
13 with certain terms and conditions for a breach of contract in his professional land surveying. That
14 decision is now final.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a
18 decision:

19 1. Revoking or suspending Civil Engineer License Number C 27460, issued to William
20 Chuan Shen.

21 2. Ordering William Chuan Shen to pay the Board for Professional Engineers and Land
22 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
23 Business and Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 4/22/10

Original Signed

DAVID E. BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

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